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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,187	12/13/2001	David Cole	019	1041

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EXAMINER

PANTUCK, BRADFORD C

ART UNIT PAPER NUMBER

3731

DATE MAILED: 02/26/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/022,187

Applicant(s)

COLE ET AL.

Examiner

Bradford C Pantuck

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on December 13, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 4,889,120 to Gordon et al. Gordon discloses a method for forming an anastomosis [Column 7, lines 15-27] between two blood vessels [Column 6, lines 56-57; Column 5, lines 59-60] to place their lumens in fluid communication. One of ordinary skill in the bypass surgery art knows that Gordon is intending to place lumens (the inside cavities of respective tubes) in fluid communication with each other because he intends to use his apparatus to form an “end-to-side” connection between vessels [Column 7, line 23].

Gordon uses magnetic force to couple the two vessels [Column 2, lines 1-3]. Specifically, Gordon discloses microscopic particles, which have magnetic properties. He introduces these magnetic particles into the edges of the vessels that are to be connected [Column 2, lines 37-45]. Additionally, Gordon discloses using an adhesive that secures the magnetic particles to the respective vessels [Column 6, lines 43-49].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.S.R. Inventors' Certificate No. 1,179,978 to Myshkin in view of U.S. Patent No. 4,889,120 to Gordon. Although the Myshkin reference is in Russian, an English abstract has been included with the document. Also, U.S. Patent No. 5,690,656 to Cope et al. describes what is disclosed in the Myshkin reference in Column 1, lines 31-59.

Myshkin discloses employing magnetic rings (1,2) to form an anastomosis between hollow organs of the digestive tract [see Abstract]. The magnetic rings are shown clearly in Figure 1 and the anastomosis is shown clearly in Figure 2. Myshkin's configuration is also shown in Figure 3 of U.S. Patent No. 5,690,656 to Cope et al. As demonstrated by these references, such a configuration—one in which two magnetic rings are used for an anastomotic procedure—is well known in the medical art.

Regarding Claims 1, 2, and 5, Myshkin discloses securing his components (rings) to the vessel without any *fixation structure being present in the vessel lumen* [Abstract]. The word securing is interpreted to include securing using magnetic means alone. No suturing, stapling, etc...are shown as being necessary to secure the components (1,2) to the vessel.

Although Examiner does not read Russian, it does not appear that Myshkin discloses securing his rings to the vessel wall with an adhesive. However, Gordon

discloses securing magnetic materials to the walls of vessels and provides a motivation for using an adhesive to secure them to vessels. Gordon teaches that in order to enhance the magnetic connection between biological vessels one ought to use an adhesive in conjunction with the magnets [Column 6, lines 44-48]. Applicant should note that although Gordon does not disclose the same configuration (rings located inside of the lumens of the vessels) as Myshkin, he does disclose *the principle of coating magnets with an adhesive glue*. Therefore, it would have been obvious to one having ordinary skill in the vessel connecting art at the time of the invention to apply an adhesive glue liberally to all the surfaces of Myshkin's rings (1,2) in order to more firmly secure the anastomosis connection, as taught by Gordon.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,690,656 to Cope et al.

U.S.S.R. Inventors' Certificate No. 736,966 to Rudakov et al.

U.S.S.R. Inventors' Certificate No. 1,769,863 to Kanshin et al.

U.S. Patent No. 4,210,132 to Perlin

U.S. Patent No. 4,899,744 to Fujitsuka et al.

U.S. Patent No. 5,330,486 to Wilk

U.S. Patent No. 6,173,715 B1 to Sinanan et al.

U.S. Patent No. 5,895,404 to Ruiz

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradford C Pantuck whose telephone number is (703) 305-8621. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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February 20, 2004